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18 Of Attorneys for Plaintiffs.

19 UNITED STATES DISTRICT COURT
20 DISTRICT OF NEVADA

21 "LILY," et al,

22 Plaintiffs,

23 v.

24 JAN ROUVEN FUECHTENER,

25 Defendant.

NO. 2:19-cv-00352-RFB-EJY

PLAINTIFFS' MOTION TO APPROVE
MINOR SETTLEMENTS

Date:

Time:

BEFORE HONORABLE MAGISTRATE
JUDGE ELAYNA J. YOUCHAH
UNITED STATES DISTRICT COURT

NOTICE OF MOTION AND MOTION

NOTICE IS HEREBY GIVEN that, on October __, 2021, at __ am., or as soon thereafter as counsel may be heard,

Plaintiffs Jane Doe as next friend for Pia, a minor, and William L.E. Dussault, Guardian ad Litem for Violet, will and hereby do move the Court for approval of minor settlements.

This motion is based upon this Notice of Motion and Motion, the Declarations of counsel, Declaration of Margaret Mabie, Declarations of Jane Doe, and William L.E. Dussault, Guardian ad Litem, Proposed Order Granting Motion to Approve Minor Settlements, all pleadings and papers on file in this action and upon such other matters as may be presented to the Court at the time of hearing.

DATED this __ day of October, 2021.

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MOTION

Plaintiffs, Jane Doe as next friend for Pia, a minor, and William L.E. Dussault, Guardian ad Litem for Violet bring this motion for approval of the proposed settlements for minors, Pia and Violet.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELIEF REQUESTED

This matter comes on the motion of the Plaintiffs for approval by the court of a tentative settlement reached in this matter involving the compromise and resolution of all claims herein, including made on behalf of the minors in this action.

Plaintiffs further request approval of the attorneys' fees and costs advanced reimbursement proposed.

II. BACKGROUND

This matter was brought by the Plaintiffs for civil remedies under 18 U.S.C. 2255(a). The Court has previously approved Plaintiffs' proceeding via pseudonym. ECF 25. Each of the Plaintiffs herein are victims of child sex abuse image crimes. The Defendant pleaded guilty in DCNV

1 criminal Case No. 2:16-CR-00100-GMN-CWH to possession of child pornography in violation of
2 18 U.S.C. 2252(a)(5)(B), receipt of child pornography in violation of 18 U.S.C. 2252A(a)(2) and (b),
3 as well as distribution of child pornography in violation of 18 U.S.C. 2252A(a)(2) and (b).

4 Two of the ten Plaintiffs herein are currently minors---- Pia and Violet. Therefore, the
5 parties ask the Court for approval of the settlements of Pia and Violet in this motion.

6 Blocked accounts have been set up pursuant to previous court orders for each of the minors.
7 All funds obtained on account of Violet's status as a victim of child sex abuse image crimes are
8 placed in a blocked account monitored by her home state court. A blocked account for Pia is set up
9 in Seattle Washington, the home state of her legal counsel pursuant to an order approving minor
10 settlement in a prior matter. Each of these accounts preclude withdrawal of funds absent court order.
11 Plaintiffs proposed that within forty-five (45) days of receipt of any funds for the minors herein
12 which may be approved by the court that Plaintiff's counsel files with the court a declaration
13 verifying the deposit of such funds into the blocked account. It is further requested that any bond be
14 waived.

15 **III. EVIDENCE RELIED UPON**

16 The parties rely upon Declarations of William L.E. Dussault, Guardian ad Litem for Violet,
17 Jane Doe for Pia, and the Declarations of Plaintiffs' counsel Carol L. Hepburn, Deborah A. Bianco,
18 Margaret Mabie, and John A. Kawai, as well as the records and files herein.

19 **IV. ISSUES PRESENTED**

- 20 A. Whether the settlements proposed for the minors are fair and reasonable.
- 21 B. Whether the attorneys' fees and costs reimbursement requested are fair and reasonable.
- 22 C. Whether the provision for deposit of funds for minors into blocked accounts is
- 23 reasonable.
- 24 D. Whether a bond should be waived.
- 25

1 **V. LEGAL AND FACTUAL ISSUES**

2 This court has a special duty to protect the interests of the minors herein. *Robidoux v.*
3 *Rosengren*, 638 F.3d 1177 (9th Cir. 2011). The question before the court is whether the net
4 settlement to be distributed to the minors is fair and reasonable in light of the facts and
5 circumstances of the case *Robidoux, supra* at 1181-82.

6 Plaintiffs have sought by their complaint statutory liquidated damages of \$150,000 each plus
7 attorneys' fees as provided by 18 U.S.C. 2255(a). The parties have engaged in extensive discovery
8 and litigation of the issues presented by this matter as is evidenced by the Court's Docket herein.

9 Relatively few cases have been brought under this statute for victims of child sex abuse
10 image crimes and far fewer have been litigated fully or tried. Little caselaw has been developed in
11 other cases concerning the issues presented.

12 **VI. PROPOSED SETTLEMENT AND SOURCE OF FUNDS**

13 There is no insurance policy which might cover the claims against Mr. Fuechtener or the
14 costs of defense. Through the course of discussions regarding settlement, Mr. Fuechtener and his
15 counsel forwarded a copy of Mr. Fuechtener's 9/8/21 Jan Fuechtener personal asset statement, FAJR
16 Magic trust 2020 tax return, Jan Fuechtener 2020 tax return, and FAJR trust statement May 2021.
17 Plaintiffs' counsel engaged in investigation of such matters to the extent that they were able given
18 the application of various privacy laws.

19 The settlement tentatively reached by the parties provides for Mr. Fuechtener to pay a total of
20 \$ [REDACTED] for benefit of all Plaintiffs to Plaintiffs' counsel's trust account in settlement and
21 resolution of all claims herein.

22 Further litigation of this matter in the absence of settlement would further consume the finite
23 resources available for settlement
24
25

1 The Plaintiffs, by prior agreement among themselves, agree to an equal sharing of any
2 proceeds of the resolution of this matter as well as an equal sharing of the costs of the litigation.
3 With the proposed settlement each of the plaintiffs would receive \$ [REDACTED] gross. After proposed
4 fees of \$ [REDACTED] each, and costs of \$1,368.81 each, the net to each plaintiff, including each of the
5 minors, would be \$ [REDACTED].

6 There are no subrogated expenses to be paid from the settlement funds.

7 Because the funds are to be placed in blocked accounts, Plaintiffs request that any
8 requirement for a bond be waived.

9 VII. ATTORNEYS FEES AND COSTS

10 This action is brought under 18 U.S.C. 2255(a) and is still relatively novel in terms of the
11 broad sweep of subject matter of federal court actions. Few such actions have apparently been tried
12 across the country. Plaintiffs' counsel are aware of only approximately ten attorneys including
13 themselves, nationwide, who regularly represent victims of child sex abuse image exploitation
14 crimes in civil matters or criminal restitution matters.

15 Plaintiffs' attorneys have advanced all costs necessary in pursuit of this action. No funds
16 have been advanced by any of the plaintiffs themselves.

17 Plaintiffs' counsel jointly estimate that they have expended the equivalent of \$50,000 in
18 attorney time in prosecuting this matter. This does not count time spent by counsel's paralegals who
19 have expended additional time on initial drafts of documents, correspondence, communications with
20 clients, and scheduling.

21 Jane Doe, for Pia, and the Settlement Guardian ad Litem for Violet entered into fee
22 agreements with counsel Hepburn and Bianco at the outset of representation providing for a one-
23 third contingent fee together with reimbursement of reasonable out of pocket costs. Attorney
24 Hepburn has represented minor Violet since 2015 under this fee agreement. Attorneys Hepburn and
25

1 Bianco have represented the minor Pia since 2016, also under a one-third contingent fee agreement.
 2 These agreements have previously been approved by multiple courts in similar matters and the
 3 conservatorship/guardianship matters. An agreement for association of Attorney Kawai as local
 4 counsel was also entered into by each of the Plaintiffs. This agreement provides that Mr. Kawai's
 5 fees would be a part of the one-third contingent fee and that Plaintiffs would pay no greater fee
 6 because of his participation as local counsel.

7 Declarations of each counsel are filed herewith attesting to the time and efforts expended in
 8 this matter. An itemization of costs advanced is included with each declaration.

9 Plaintiffs' counsel have brought other similar actions under 18 U.S.C. §2255 for these
 10 plaintiffs. Despite similar issues, the outcomes vary substantially depending on the development of
 11 record in the underlying criminal proceedings and the assets and circumstances of the particular
 12 defendant. Many such resolutions by settlement result in contingent fees at less than counsel's
 13 hourly rate, as is the case here.

14 Plaintiffs rely on the Declarations of counsel Carol L. Hepburn, Deborah A. Bianco, John
 15 Kawai, and Margaret Mabie in support of their request for approval of attorneys fees and costs as
 16 well as the declarations of Jane Doe, for Pia, and of William L. E. Dussault, Settlement Guardian ad
 17 Litem for Violet.

18 Respectfully submitted on this ____ day of October, 2021.

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